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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9246 of 2005

Wasp Pumps Pvt. Ltd. ...Petitioners

v/s.

Baburao S. Mali & anr. ...Respondents

Mr. Rahul Nerlekar for the Petitioners

Mr.Ambar Joshi for Respondents

**CORAM : B.H.MARLAPALLE,J.**
**DATED : 23rd November, 2007**

**P.C.**

Heard Mr. Rahul Nerlekar, the learned counsel for the Petitioner company. Though this petition claims to have been filed under Article 226 of the Constitution, it impugnes the order passed by the Controlling Authority and subsequently confirmed by the Appellate Authority under the Payment of Gratuity Act, 1972 and, therefore, I am treating this petition under Article 227 of the Constituion.

2. The present Respondent had approached the Controlling Authority by filing separate applications in the prescribed form i.e. form I under Rule 7 framed

under the Payment of Gratuity Act, 1972 and claimed that though they had retired on reaching the age of superannuation by 31-12-2000 after putting in more than 35 years of service,they were not given the payment of gratuity by the employer. On notice the Petitioner company caused its appearance through its representative Shri Jagdish Kamat. Subsequently, the company did not contest the claim of the workman and, therefore, the Controlling Authority allowed the applications filed by the respondent on 5-10-2001. The application for review was filed against the said exparte order on or about 1-8-2003 i.e. after about one year and 10 months. The Review Application was rejected by the Controlling Authority by his order dated 12-1-2004 holding that the applications were made beyond limitation as prescribed under Rule 11 (5) of the Payment of Gratuity (Maharashtra) Rules, 1972 and they did not file any application to set aside the exparte order dated 5-10-2001. The Petitioner Company challenged the orders passed by the Controlling Authority before the Appellate Authority and the appeal came to be dismissed and hence this petition.

3. On the first point the lower Appellate Authority observed that the company was represented before the Controlling Authority by its representative Shri Jagdish

Kamat who had abruptly stopped appearing after some dates and as a result of which the applications proceeded and were decided exparte. From the record it was clear that the Controlling Authority had informed the appellant from time to time and such communication was also on record indicating that the Controlling Authority had called upon the company to remain present so as to decide the application. Obviously there was no response and hence the applications were decided exparte. Admittedly, the review applications were filed belated. On the point of merits the company challenged the quantification of the amount contending that by settlement entered into between itself and the workmen represented through the Bhartiya Shramik Sena Union on 3-5-2001 and it was agreed in the said settlement that only 48% of the wages for the period from 2000-2001 would be paid by way of salaries. The company contended that this settlement was binding on the present Respondent claimants and the amount of gratuity ought to have been calculated on the basis of last drawn salary. The Lower Appellate Authority held that the settlement was signed on 3-5-2001 whereas the claimants had retired by or before 31-12-2000 and, therefore, the subsequent settlement could not alter/reduce their salaries. It was noted that Shri V.V.Sawant had retired on 31-8-1998 whereas the others retired on 31-12-2000 as against the

settlement dated 3-5-2001. In the view of the Lower Appellate Authority if the claimants were in service as on 3-5-2001, it would be a different matter and, therefore, company's case was turned down even on merits.

4. I do not find any error apparent on the face of the record in the view taken by the Lower Appellate Authority in confirming the order passed by the Controlling Authority directing the payment of gratuity to the superannuated claimants. The concurrent view taken by both the authorities cannot be termed as perverse or erroneous so as to call for interference under Article 227 of the Constitution of India.

Petition is rejected summarily.

**[B.H.MARLAPALLE,J.]**